

DETAILED NON-RESPONSIVE ACTION

1. The reply filed on **02 June 2010** is not fully responsive to the prior Office Action because of the following omission(s) or matter(s):

Newly submitted amended claims 32-65, 81 and new claims 136-139 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons:

The amendment filed on 02 June 2010 amends all claims drawn to the elected invention and presenting only claims drawn to a non-elected invention is non-responsive (MPEP § 821.03). The remaining claims are not readable on the elected invention because originally elected claims 32-38, 41-49, 52, 55-65 and 81 and previously withdrawn claims 39-40, 50-51, and 53-54 have been amended to claim a "sensor" rather than the previous claims to a composition.

Applicants define a "sensor" (specification, page 13, lines 3-10) as any device or article and the amended claims include an energy source and detector limitations for said "sensor" device.

Inventions as originally filed and as amended are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product, and the species are patentably distinct (MPEP § 806.05(j)). In the instant case, the intermediate product is deemed to be useful as pharmaceutical agents (see EP 748805, cited in last Office Action) and the inventions are deemed patentably distinct because there is nothing of record to show them to be obvious variants.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 32-65, 81, 127-128 and 136-139 have been withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

See 37 CFR 1.111. Since the above-mentioned reply appears to be *bona fide*, applicant is given **ONE (1) MONTH or THIRTY (30) DAYS** from the mailing date of this notice, whichever is longer, within which to supply the omission or correction in order to avoid abandonment. EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136(a).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel S. Metzmaier whose telephone number is (571) 272-1089. The examiner can normally be reached on 9:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David W. Wu can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 1796

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

**/Daniel S. Metzmaier/
Primary Examiner, Art Unit 1796**

DSM